

NONPRECEDENTIAL

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

LISTON SEWER,)	
)	
Plaintiff)	
)	
v.)	
)	CIVIL NO. 2002-0178
LIAT (1974) LTD.,)	
)	
Defendant)	
_____)	

MEMORANDUM OPINION

Finch, Chief Judge

THIS MATTER comes before the Court on the motion of Defendant Liat to dismiss. Pursuant to 5 V.I.C. § 4905, Defendant Liat asks the Court to dismiss this action on the grounds of *forum non conveniens*. Plaintiff opposes this motion. The Court held a hearing on this motion on June 10, 2004.

I. Background

This case involves an incident that occurred on July 28, 2002, in Tortola, British Virgin Islands. Plaintiff Liston Sewer (a citizen of St. Thomas, U.S. Virgin Islands) had previously purchased a ticket for the Liat flight which was scheduled to depart Beef Island for Antigua at 2:15pm on July 28, 2002. He arrived at the airport in Tortola at approximately 12:30pm that day. (Plaintiff's Complaint at ¶ 2, 4, 5, and 7.) Plaintiff checked in for his flight and received a boarding pass. (Plaintiff's Complaint at ¶ 8.) The flight was delayed and boarding did not

begin until after the aircraft arrived around 4:00pm. (Plaintiff's Complaint at ¶ 10.) A Liat employee pulled Plaintiff out of the boarding line and told Plaintiff that he would have to take the next flight due to overbooking, even though Plaintiff was one of the first persons to check in for the flight. (Plaintiff's Complaint at ¶ 12, 15.) Defendant Liat called the police, who requested that Plaintiff deplane. Plaintiff did so in order to explain his situation and when he attempted to replane, Plaintiff was arrested. (Plaintiff's Complaint at ¶ 16 - 17.) Defendant Liat allegedly stated that Plaintiff had assaulted a stewardess and child on the plane. (Plaintiff's Complaint at ¶ 18.) Plaintiff claims that Defendant Liat violated federal and Virgin Islands laws by discriminating against him on the basis of his race and national origin as a Black, West Indian, Rastafarian. (Plaintiff's Complaint at ¶ 5, 14, 30.) Additionally, Plaintiff brings defamation, intentional (or in the alternative negligent) infliction of emotional distress, and punitive damages charges against Defendant Liat. (Plaintiff's Complaint at ¶ 33, 34, 37, 38, 41.) Plaintiff seeks damages for having suffered from a newfound fear of flying, humiliation, mental anguish, physical and psychological injuries, pain and suffering, loss of ability to earn income, and loss of enjoyment of life. (Plaintiff's Complaint at ¶ 28.)

Neither party disputes that the U.S. District Court of the Virgin Islands has jurisdiction to preside over this case.

II. Analysis

A. Standard for *Forum Non Conveniens*

The first step in a *forum non conveniens* analysis is to determine the existence of an alternative forum. See *Sevison v. Cruise Ship Yours, Inc.*, 1997 WL 530267 (D.V.I. 1997)

(citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254 n. 22, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981)). The Court must then decide whether public factors (e.g. administrative issues, forcing jury duty on a community that has no tie to the case, local interest, and unnecessary difficulty in applying foreign law) and private factors (e.g. access to evidence, compulsory process and travel costs for witnesses, viewing the site of the incident if applicable, and other practical considerations related to trying the case) weigh strongly in the defendant's favor. See Sevison v. Cruise Ship Yours, Inc., 1997 WL 530267 (D.V.I. 1997) (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-509, 67 S.Ct. 839, 91 L.Ed. 1055 (1947)). In Sevison, 1997 WL 530267, this Court declared that the defendant's burden to show inconvenience is even greater when the alternative forum is a foreign one and Plaintiff is an American citizen (citing Warn v. M/Y Maridome, 961 F.Supp. 1357, 1374 (S.D.Cal.1997)).

B. Availability of an Alternative Forum

Defendant advocates that Tortola would be an adequate forum to adjudicate this case because Defendant is amenable to process in Tortola, sufficient remedies are provided in Tortola law for tort actions, and that Plaintiff would receive a fair trial in Tortola. (Defendant's Motion at 6.) Upon inquiry by the Court at this hearing, Defendant consented to jurisdiction in Tortola, waived any statute of limitations defenses that would be imposed by Tortola law, and agreed to satisfy any judgment entered by a court in Tortola. Plaintiff does not dispute that Tortola would be an adequate forum for this litigation, but reiterates the legally recognized preference for allowing Plaintiff to litigate in his home jurisdiction. See Massaquoi v. Virgin Atlantic Airways, 945 F.Supp. 58, 61 (S.D.N.Y. 1996) (citing Koster v. Lumbermens Mutual Casualty Co., 330 U.S. 518, 524, 67 S.Ct. 828, 831 - 32, 91 L.Ed. 1067 (1947)).

C. Public Factors

Defendant claims that this dispute has no nexus to St. Croix and that therefore, this Court's resources would be unnecessarily wasted by trying the case. (Defendant's Motion at 6.) Defendant further argues that there is nothing to connect the action with St. Croix that would justify imposing jury duty on the citizens of St. Croix, or to prove local interest. (Defendant's Motion at 5.) Plaintiff asserts that the U.S. Virgin Islands has an interest in this case because as a citizen who lives, works, and pays taxes in the USVI, Plaintiff is alleging that he has been discriminated against, falsely arrested, and defamed. (Plaintiff's Opposition at 10 - 11.) Defendant further contends that Plaintiff's tort claims are governed by the laws of Tortola and that this Court should not be burdened with having to apply foreign laws. (Defendant's Reply at 5.) At the hearing, Plaintiff pointed out that this action is based on civil law tort claims and that therefore, complications in applying Tortola law would not arise. While the Court acknowledges that these public factors suggest moderate inconvenience in trying this case in the U.S. Virgin Islands, the Court finds that they do not weigh strongly in favor of a trial in Tortola.

D. Private Factors

Defendant asserts that all of the evidence and witnesses are located in Tortola or another location outside of the U.S. Virgin Islands. (Defendant's Motion at 3.) Plaintiff argues that only some of the witnesses and documents are in Tortola, and that this does not justify trying the case there. (Plaintiff's Opposition at 9.) At the hearing, Plaintiff noted that Defendant admitted many of the witnesses reside in Antigua, in which case trying the case in the U.S. Virgin Islands is no more inconvenient than trying it in Tortola. Defendant notes the cost of transporting evidence and witnesses to the U.S. Virgin Islands and points out that this Court's power to subpoena

witnesses does not apply to residents of a foreign forum. (Defendant's Motion at 3 - 4.) Plaintiff argues that as an airline, Defendant can bear the costs of transporting documents and willing witnesses. (Plaintiff's Opposition at 8 - 9.) Plaintiff points out that Defendant can depose other Tortolan witnesses pursuant to letters rogatory. (Plaintiff's Opposition at 9.) Finally, Defendant cites the opportunity to view the scene if the case is tried in Tortola (Defendant's Motion at 6.) Plaintiff counters that there is no need to view the premises of the airport because this is a discrimination case. (Plaintiff's Opposition at 10.) Although these private factors demonstrate that it would be more convenient for Defendant to try this case in Tortola than in the U.S. Virgin Islands, the Court cannot conclude that Defendant has overcome its heavy burden of proof.

III. Conclusion

Although the Court declines to dismiss this case, the Court agrees with Defendant that the Division of St. Thomas and St. John would be a more appropriate vicinage than St. Croix to try this case. An appropriate Order is attached.

ENTER:

Dated: June 10, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:

Wilfredo F. Morales
Clerk of the Court

By:

Deputy Clerk

cc: Hon. George W. Cannon
Lee J. Rohn, Esq.
Yvette D. Ross-Edwards, Esq.

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

LISTON SEWER,)	
)	
Plaintiff)	
)	
v.)	
)	CIVIL NO. 2002-178
LIAT (1974) LTD.,)	
)	
Defendant)	
_____)	

ORDER

THIS MATTER comes before the Court on the Motion of Defendant to Dismiss, docket item # 13. In accordance with the attached Memorandum Opinion, it is hereby **ORDERED** that the Motion of Defendant to Dismiss is **DENIED**. It is further

ORDERED that the above-captioned matter will be **TRANSFERRED** to the District Court of the Virgin Islands, Division of St. Thomas and St. John. It is further

ORDERED, for the purpose of efficient and expedient transfer of this matter to the Division of St. Thomas and St. John, that this matter shall be and is hereby **CLOSED** in the District Court of the Virgin Islands, Division of St. Croix. It is further

ORDERED that the matter shall be **REOPENED** under a new case number in the District Court of the Virgin Islands, Division of St. Thomas and St. John. All documents including any pending motions shall be included within such St. Thomas and St. John file.

ENTER:

Dated: June 10, 2004

**RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE**

Attest:

Wilfredo F. Morales
Clerk of the Court

By:

Deputy Clerk

cc: Hon. George W. Cannon
Lee J. Rohn, Esq.
Yvette D. Ross-Edwards, Esq.